

Effective Date - May 10, 2001

SUBJECT: WEATHERIZATION ACTIVITIES AND FEDERAL LEAD-BASED PAINT REGULATIONS

PURPOSE: The primary purpose is to provide guidance to Regional Offices and States relative to Weatherization health and safety matters associated with lead-based paint in homes. The secondary purpose is to provide information about other Federal lead-based paint rules that apply to Weatherization work.

SCOPE: The provisions of this guidance apply to all grantees applying for financial assistance under the Department of Energy's Weatherization Assistance Program.

BACKGROUND: Childhood lead poisoning is linked to reduced intelligence, low attention span, reading and learning disabilities, juvenile delinquency, behavioral problems, and other adverse health effects. Over the past 20 years, the removal of lead from gasoline, food canning and other sources have been successful in reducing population blood lead levels by more than 80 percent.

However, nearly one million children still have excessive levels of lead in their blood, making lead poisoning a leading childhood environmental disease. Lead-based paint, along with the contaminated dust and soil it generates in housing, is the major remaining source of exposure and is responsible for most cases of childhood lead poisoning today.

Congress and Federal agencies responsible for the environment and disease control have become increasingly aware of the lead-based paint hazard. Congress authorized revision of EPA, HUD and OSHA lead-based paint regulations under Title X of the 1992 Housing and Community Development Act. This Act is the basis for the EPA, HUD and OSHA regulations discussed in this program notice.

The Department of Energy (DOE) is a member of the two relevant interagency task forces: the President's Task Force on Environmental Health Risks and Safety Risks to Children and the Federal Interagency Lead-Based Paint Task Force.

POLICY: Lead-based paint dust and other residues are hazards that Weatherization workers are likely to encounter in older homes. HUD estimates that four million homes have significant lead-based paint hazards. Furthermore, Weatherization work may directly disturb lead-based paint, possibly creating hazardous conditions. While the authorizing legislation for DOE's Weatherization Assistance Program (WAP) does not specifically address lead-based paint hazard reduction, DOE's policy is that Weatherization workers must be aware of the hazard and conduct Weatherization activities in a safe work manner to avoid contaminating homes with lead-based paint dust and debris, and to avoid exposing themselves and their families to this hazard.

It is important to remember that the WAP's legislated purpose is to install energy efficiency measures in Weatherization clients' homes, in order to lessen their energy cost burden. WAP is not funded to do lead-based paint abatement work, nor to do lead-based paint hazard control or stabilization. In the process of weatherizing a home, workers sometimes encounter and have to disturb painted surfaces that are known or presumed to contain lead-based paint. When that happens, DOE funds may be used to minimize the potential hazard associated with the specific painted surfaces that workers are directly disturbing in the course of installing an energy efficiency measure, but DOE funds may not otherwise be used for abatement, stabilization, or control of the lead-based paint hazard that is in the house.

Weatherization is an energy efficiency program, not a renovation or remodeling or rehabilitation program, and thus may not be subject to other agencies' rules governing renovation, remodeling, or rehabilitation work. However, there are certain instances in which particular Federal rules relating to lead-based paint hazards do apply to Weatherization work. Attachment A is a summary discussion, for your reference, of the other Federal agency regulations that pertain to lead-based paint hazards and the circumstances under which we believe these regulations apply to Weatherization work. [Attachment B](#) is a Flow Chart to assist with determination of the appropriate actions, described below, and applicability of the various Federal rules.

DOE GRANT GUIDANCE: The Weatherization Program's 1993 Health and Safety Program Notice (WPN 93-13A) established that lead-based paint abatement, hazard control, or stabilization are not allowable activities using Weatherization Program funds. However, work that is needed in conjunction with Weatherization activities that disturb surfaces having lead-based paint, to prevent the generation of lead-based paint dust and residues, is allowable as long as the work is associated with installing energy efficiency measures.

When Weatherization crews disturb surfaces that may have lead-based paint, they must exercise caution to keep any dust that is generated from becoming a hazard to the clients, to themselves or to their families. They do this (safe guarding people from lead-based paint hazards) through a set of safe work protocols hereafter referred to as Lead Safe Weatherization (LSW). In the course of applying the principles of LSW to the installation of energy efficiency measures, Weatherization crews may perform some of the same procedures which are used in the control or stabilization of lead-based painted surfaces, but that will be only incidental to following LSW practices while accomplishing the weatherization of the home.

1. State Applications. The 2001 WAP Annual Grant Guidance, Program Notice 01-01, requires states to identify and implement "lead-based paint safe work practices," which now are referred to as "Lead Safe Weatherization" (LSW). As a part of their health and safety plan, States must identify the procedures for local agencies to follow to address lead-based paint issues.

These procedures, at a minimum, were specified to include the following:

1. A description of the LSW practices to be followed by Weatherization crews;
2. The timetable for completing any necessary lead-based paint training for local agency Weatherization crews;

3. The proper disposal of all materials containing lead-based paint; and
4. The description of a "walk away" policy (now referred to as a deferral policy) from dwellings where DOE funding or crew training is insufficient to perform the appropriate LSW practices.

2. What is LSW? Lead Safe Weatherization (LSW) is a set of protocols to be used when disturbing surfaces that may have lead-based paint that will reduce and control the amount of lead dust and paint chips that are generated. The protocols, when designed and followed properly, address compliance with applicable regulations, including state and local regulations, and may reduce the risk of liability associated with the work. The protocols require training to gain an understanding of lead-based paint hazards and their harmful effects and to acquire skills in reducing the lead dust generated when painted surfaces are disturbed in the course of installing energy efficiency measures. The protocols involve setup and cleanup practices that contain the spread of the lead dust during Weatherization work and eliminate most traces of the lead dust and debris (generated from the weatherization activities) when the work is finished. LSW practices are described in the State of California WAP booklet titled "Lead-Safe Weatherization." The booklet will soon be available for review on the WAPTAC website and is recommended as an example for States to consider in developing their own set of LSW protocols. Lead-safe work practices are also described in the HUD publication "Lead Paint Safety: A Field Guide for Painting, Home Maintenance and Renovation Work" which is available at www.hud.gov/offices/lead, or can be ordered by calling the Lead Clearinghouse at 1-800-424-LEAD.

3. When is LSW Necessary? In order to be as compatible as possible with pertinent requirements imposed by other agencies? regulations, DOE recommends that States include in their health and safety plan the following set of criteria for determining when LSW would be performed by local Weatherization agencies:

1. The dwelling was constructed pre-1978, and
 2. The dwelling has not been determined to be lead-based paint free, and
 3. Either, the amount of disturbed lead-based painted surface exceeds two square feet per room of interior surface, twenty square feet of exterior surface, or 10% of a small component type e.g., window; or the amount of lead-based paint dust that will be generated by the weatherization work exceeds the OSHA defined airborne levels for lead.
4. Testing for Lead-Based Paint. Testing for lead-based paint where it is related to the installation of energy efficiency measures is an allowable expenditure of DOE funds.

These expenditures must be within the limits set by the State in their Weatherization health and safety plans for health and safety measures. In pre-1978 houses where the presence or absence of lead-based paint has not been determined, testing for lead-based paint could be worthwhile. If the anticipated energy efficiency work involves disturbing more than the minimum amount of painted surfaces, then ruling out the presence of lead in the paint would save the time and costs associated with doing LSW protocols.

However, testing can be expensive and may take time. To have any standing in liability suits, testing requires the employment of a person who is a certified Lead Paint Inspector or Risk Assessor and has been trained and is knowledgeable in sampling techniques. Limited testing of only those surfaces that will be disturbed is a less expensive alternative to a complete lead paint inspection, and the determination is faster if an XRF is used. The XRF (X-Ray Fluorescence) is a diagnostic tool, and gives an almost instantaneous result, but it is expensive and requires that the operator be certified.

Low cost spot-test kits are available that provide a colorimetric (color change) indication of the presence or absence of lead. HUD and EPA are reviewing the efficacy of the commercial kits available, but have not yet completed their findings. Preliminary results indicate that these kits may be useful as a negative screen (an indication that no lead is present).

The following considerations are offered as a guide to determining whether testing is worth the time and money on a case-by-case basis:

1. Houses built from 1978 on may be assumed to be free of lead-based paint, without testing.
2. In houses built prior to 1940, it is logical to simply assume the presence of lead-based paint and save the cost of testing.
3. In homes built between 1940 and 1978, testing may not be warranted if the amount of paint to be disturbed is small, since it may be cheaper to perform LSW for a small area than to incur the expense of testing. However, where the amount of paint to be disturbed is relatively large, it may be worth the cost of testing, since a negative result would mean that the crews could dispense with having to perform the LSW protocols.

Routine testing of every house for lead paint levels before the start of work ("entrance testing") and at the end ("clearance testing") is a standard associated with lead paint hazard control or abatement work and is not an allowable use of DOE Weatherization funds. If a State establishes a regimen of routine entrance and clearance testing for all cases where the presence of lead paint is a possibility, the State must use other sources of funding to implement such a policy.

5. Deferrals. States should develop a lead-based paint "deferral policy" to provide guidance to their subgrantees as to when it is prudent to defer certain Weatherization work in homes that have either tested positive or are assumed to have lead-based painted surfaces.

The following steps are recommended:

First, the subgrantee should assess the following factors:

1. Is the agency prepared to work with lead-based paint? (i.e., have workers received training in LSW work practices; is the necessary equipment such as HEPA vacuum cleaners available; and does the agency's liability insurance policy allow work with lead-based paint);

2. What is the condition of the painted surfaces in the house? (i.e., is it so seriously deteriorated that a workman's presence just walking around the house is enough to stir up lead-based paint laden dust residues and thus pose a threat to the clients and to the workers themselves);
3. What is the extent to which the specific energy efficiency measures determined by the audit will disturb painted surfaces? (i.e., will the disturbance generate dust in excess of OSHA minimums); and,
4. Will the cost of doing LSW work represent a large portion of the total cost, such as to exceed the amount allowed by the State's health and safety plan? (which could be the case if large amounts of lead-based paint surfaces will be disturbed).

Second, the grantee should determine, based on consideration of the above factors, whether to:

1. Proceed with all the weatherization work, following LSW work practices, or
2. Do some of the weatherization tasks, defer others, or
3. Defer all of the weatherization work.

Deferral would mean postponing the work either until the Weatherization agency is prepared to work with lead-based paint, or until another agency has corrected the problem such that weatherization can be safely performed. In cases where extensive LSW would be necessary, agencies are encouraged to arrange with other organizations, which are funded to do lead paint hazard control, to perform some of the more costly activities, such as entrance testing or clearance testing. In areas where there are no organizations performing such work, Weatherization agencies may choose to develop their own capabilities for lead-based paint hazard control work, but they may not use DOE Weatherization funds for this purpose.

The State's lead-based paint deferral policy should not call for deferring the Weatherization work solely because there is lead-based paint in the home. Even in such a home, regular Weatherization work that does not disturb painted surfaces and does not stir up lead-based paint laden dust residues can be done.

6. Funding of Lead Safe Weatherization. While the WAP Final Rule of 2000 (Federal Register, December 8, 2000) does not mandate a separate cost category for health and safety, it does allow States to budget health and safety costs as a separate category and, thereby, to exclude such costs from the calculation of average cost per home. States are reminded that, if they continue to budget and report health and safety costs under the program operations category, these costs would be included in the calculation of the average cost per home.

States should carefully consider the approach to be taken when they draft their health and safety accounting procedures. While ease of accounting is an important consideration, States should keep in mind that activities assigned to the health and safety budget category do not have to be cost-justified by the energy audit. When the same items are assigned to incidental repair, weatherization material, or installation cost categories, they must be cost-justified.

Some Weatherization agencies have successfully applied for funding from programs such as HUD's Lead Hazard Control and Healthy Homes to augment their Weatherization efforts when the work is in homes with lead paint. In some States, the Legislatures have appropriated separate funding to cover the additional costs to train and certify workers for work in homes with lead paint. Another potential source of funding, subject to each State's approval, is the HHS Low-Income Home Energy Assistance Program (LIHEAP). For your reference, Attachment C is LIHEAP Information Memorandum #2001-15, February 1, 2001, advising States that they may allow expenditure of LIHEAP funds, allocated for Weatherization of homes, to be appropriately used for certain expenses related to LSW.

7. Liability Issues. The WAP Program Notice 01-01, Annual Guidance for 2001, suggested that States should have their local agencies check their liability insurance to ensure that there are no exclusion clauses for doing Weatherization in a home with lead paint when the energy efficiency measure requires the disturbance of painted surfaces. Since the issuance of that Guidance, DOE has received feedback that most insurance policies do, in fact, have such an exclusion clause, which means that those agencies would likely not be covered should a client pursue litigation for lead poisoning.

DOE strongly advises agencies to either refer or defer weatherization work that will disturb surfaces that may contain lead-based paint, until they have insurance that will provide coverage for LSW work in situations involving lead-based paint.

The cost of such insurance is an allowable DOE expense, and we urge agencies to seek ways to obtain the coverage at reasonable rates. DOE's Guidance suggested that States consider undertaking the negotiation of group rates for subgrantees' liability insurance, in order to get lower cost coverage for work in situations involving lead-based paint. We are told that some agencies have been informed that they are unlikely to get better rates for their liability insurance unless they have had EPA or state training leading to lead-paint certification. (Note: EPA certification is not a requirement for doing LSW. EPA certification is required only if the intent of the work is to do lead paint hazard control work.)

There are additional arguments that States and local agencies may find useful in making the case for lower risk associated with the nature of Weatherization work, especially when compared to lead paint abatement and lead hazard control work:

Weatherization is different from lead hazard control work and involves lesser levels of work associated with painted surfaces. In fact, the disturbance of painted surfaces, by comparison, is minimal and when it happens is incidental to the purpose of the work - the installation of energy conserving measures. In addition, not all weatherization work involves disturbing painted surfaces and some homes are lead free, and so the risk basis for insurance rates, unlike insurance for lead paint hazard control work, should not be based on one hundred percent operations in a lead paint environment for every home weatherized.

DOE is involved with EPA and HUD in continuing discussions with the insurance industry about ways to qualify Weatherization agencies for more favorable rates. We also welcome suggestions

from State and local agencies with experience in obtaining reasonable rates for this kind of work, which we will share with the network.

8. Training. LSW training for Weatherization workers, both in-house and contractor, is critical to the protection of Weatherization clients and the workers themselves. Also, it may be helpful in getting reasonable liability insurance. DOE requires that when the disturbance of painted surfaces is significant, Weatherization workers be trained in LSW.

In order to be an allowable use of DOE grant funds, training in the mitigation of lead paint hazards when disturbing painted surfaces must be related to the installation of energy efficiency measures and LSW work practices. Establishing a routine requirement for every Weatherization worker to be an EPA (or the State equivalent) certified lead paint worker is a practice used in lead paint hazard control/abatement work and is not an allowable use of DOE Weatherization funds. If a State chooses to implement a training policy requiring Weatherization workers to have EPA training and be certified to do lead hazard control work, they must use alternate sources of funding.

There are several training courses in lead paint safe work practices being offered by EPA, HUD, and States. This training may be sufficient for training Weatherization workers. If all workers have not had sufficient training by now, States should plan training for them before they work on homes with lead paint where painted surfaces in those homes will be disturbed in the course of doing the Weatherization measures. The WAPTAC website soon will have a list of several training courses that will provide sufficient orientation regarding the lead paint hazard to allow agencies to safely do Weatherization work that disturbs painted surfaces, providing that the agencies follow the State's protocols for LSW activities.

DOE is developing an LSW training course that will become available in July, 2001. That course will have an easily exportable reference tool illustrating LSW practices. Although the EPA and HUD lead paint training courses acquaint trainees with lead paint safe work practices, the DOE LSW training will address lead paint safe work practices for specific weatherization measures. For workers who will have had the HUD or EPA training, States may want to augment that training by providing them with DOE's LSW reference tool when it becomes available.

SUMMARY: We appreciate the constructive input of many people in attempting to define and resolve issues surrounding the lead paint hazard. We understand that many State and local weatherization agencies will find incorporation of this guidance into their operations difficult and challenging.

During this year's Winter meeting of the National Association for State Community Services Programs in Washington, DC, we shared and discussed a preliminary draft of this policy guidance information. Many participants raised questions about testing, training, insurance and allowable costs. We have tried to address these questions to the fullest extent possible without further delaying the Program Notice's issuance.

Because of the complexity of these issues, there may be considerations or interpretations that will require further clarification. Please let us know your questions, so we can work together on dealing with this important health and safety issue.

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